



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/12/04	Bill No:	AB 2204
Tax:	Property	Author:	Chu
Board Position:		Related Bills:	

### BILL SUMMARY

This bill, with respect to state assessees, would (1) clarify the requirements for imposition of penalties for failure to file required information in the property statement; (2) allow for partial abatement of penalties in specified circumstances, as defined; and (3) expressly provide for penalty abatement at the time values are initially set.

#### Summary of Amendments

The amendments to this bill since the previous analysis limit partial abatement to specific instances.

#### Current Law

Under existing law, each state assessee must annually file with the Board of Equalization a "property statement" in which it reports an array of information necessary for the valuation of the assessee's property for property tax assessment. A property statement filing requires the submission of financial schedules, schedules of leased equipment, a tangible property list, annual reports to the California Public Utilities Commission (CPUC), Securities Exchange Commission (SEC) Form 10Ks, annual reports to shareholders, and other documents as specified in the property statement instructions which can vary according to the type of state assessee. Failure to provide this information by March 1 or an agreed upon extension date results in the imposition of a penalty. State assessees may obtain up to two filing deadline extensions for good cause.

**Penalty For Failure to File Required Information.** The penalty applies to any state assessee that fails to file the property statement, in whole or in part, by March 1 or by the extension date.

**Partial Penalty Abatement.** Under existing law, when an assessee establishes to the satisfaction of the Board that the failure to file the property statement, or any of its parts, within the time required was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the Board is required to order the entire penalty abated. Existing statutory language does not expressly authorize the Board to abate a *portion* of the penalty.

**Penalty Abatement – Value Setting Stage.** When the Board staff imposes a penalty for late or incomplete filing, the law provides that an assessee may file a written petition for abatement of the penalty within the time prescribed by law for the filing of a petition for reassessment. Although the petition filing takes place after the value-setting

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hearing, the Board has an administrative procedure of abating some penalties at the time it sets the values of those assessee's properties.

### **Proposed Law**

**Penalty For Failure to File Required Information.** This bill would amend Section 830 of the Revenue and Taxation Code to clarify that the penalty applies when a state assessee fails to provide any of the information required to be included with or attached to the property statement. Specifically, it would add subdivision (d) to provide that the assessee is subject to a penalty when the property statement lacks the type of detail information required by Board staff and expressly states that required schedules, documents, and other information are considered a part of the property statement.

**Partial Penalty Abatement – Documents Not Ultimately Needed.** This bill would amend Section 830 and 862 to allow the Board to abate a penalty in part in a limited instance. Specifically, when any part of the property statement is not filed or is not timely filed and the Board determines that it was not necessary to determine the value of the assessee's property, the Board may order a partial abatement of the penalty.

**Penalty Abatement – Value Setting Stage.** This bill would add paragraph (2) to subdivision (g) of Section 830 and paragraph (2) to subdivision (b) of Section 862 to specify in statute that the Board may abate a penalty at the value-setting hearing in addition to the period for filing of a petition for reassessment, in accordance with existing administrative procedure.

### **In General**

Every year for property tax assessment purposes, the Board has a constitutional duty to determine the value of property owned by public utilities and other companies subject to state assessment as provided by Article XIII, Section 19 of the California Constitution. These companies must file detailed information, in a form called a "property statement," with the Board by March 1 or by an extension date each year. The deadline for companies to file this statement can for good cause be extended twice. The property statement includes documents such as financial schedules, schedules of leased equipment, a tangible property list, annual reports to the CPUC, SEC Form 10Ks, annual reports to shareholders, and other documents as specified in the property statement instructions which can vary according to the type of state assessee.

Failure to provide this information by March 1 or by the extension date results in the application of a penalty. The calculation of the penalty varies depending upon the type of information found to be deficient.

- In the case of a state assessee who fails to provide information needed to develop the state assessee's unitary value, the penalty is 10% of the **entire** unitary value (i.e. land, improvements, personal property). The penalty is added to the assessed value adopted by the Board.
- In the case of a state assessee who provides all the data required for purposes of developing the overall unitary value, but does not provide sufficient data with respect to listing and describing specific operating property needed to allocate the unit value so determined, the penalty is limited to an additional 10% of the estimated allocated value of the specific property(s) not timely reported. Thus, the penalty is limited to the value of the property that was not timely reported rather than to the entire unit value.

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However, any penalty imposed on a state assessee for failure to provide information is capped at \$20,000,000 of assessed value which, at the general 1% tax rate, means a maximum fine of \$200,000. In addition, the Board may find that the penalty should be abated, in which case no penalty is levied.

#### COMMENTS:

1. **Sponsor and Purpose.** This bill is sponsored by Board Member John Chiang. The purpose of this bill is to allow the Board to levy appropriate penalties when state assessees fail to file their annual property tax returns timely or completely. In some cases, the Board has determined that the magnitude of some penalties, 10% of the assessed value of very high value companies, was disproportionately large for minor transgressions and therefore, the Board abated the penalty in full. The authority to grant partial abatement will provide the Board an added tool to tailor the penalty to the nature and materiality of the omission.
2. **Key Amendments.** As introduced, this bill allowed the Board to partially abate any penalty imposed under Section 830 or 862. The April 12 amendment limits partial abatement to instances where documents were not filed or filed late and the Board determines that the documents were not necessary to determine the value of the property. The purpose of this amendment is to ensure that a property owner is able to receive 100% abatement in the instance where reasonable cause has been found. It was noted that when the standard of reasonable cause has been found partial abatement would not be appropriate. As introduced, this bill only amended Section 830 which relates to annual assessments. The March 26 amendment makes conforming amendments to the provisions for escape assessments, i.e., assessments made for prior years in which property escaped assessment or was underassessed. The penalty abatement provisions for annual and escape assessments should parallel each other.
3. **Penalty Abatement – All or Nothing.** Revenue and Taxation Code Section 830(f) specifies that if a state assessee's property statement is late or incomplete a penalty in the amount of 10% of the total value of the property (both real property and personal property) must be added to the assessed value. The penalty may be abated if the company proves to the satisfaction of the Board that the failure to file timely or completely was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and absence of willful neglect. Current law does not allow these penalties to be abated in part.
4. **Full Abatement Possible – Reasonable Cause.** As amended April 12 this bill restores "all or nothing" penalty abatement in instances where the Board finds reasonable cause. Where the standard in law has been met to abate the penalty in full for a late or incomplete property statement which is "reasonable cause and occurred notwithstanding the exercise or ordinary care and absence of willful neglect," then the penalty may be fully abated.
5. **Partial Abatement – Missing Parts of the Property Statement.** This bill would allow the Board to partially abate penalties in instances where documents that were not filed, or filed late, when the documents were not ultimately needed to determine the value of the property. The Board recently heard a state assessee appeal concerning a petition for reassessment and request for penalty abatement. The Board had levied a penalty for failure to file required information, which was

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eventually abated in full, because the company did not file certain documents, in this case a balance sheet and an income statement, that are required to be filed as a part of the property statement. The state assessee argues that these documents were not ultimately necessary to value the property and thus that the magnitude of the penalty was disproportionate to the inconvenience to the Board.

6. **Contents of Property Statement.** Additionally, in the above appeal the state assessee argued that their failure to provide the required documents should not result in the application of a penalty under its interpretation of the statute because, in its view, the omission of those particular documents did not “involve a failure to report property (i.e., tangible property) to the Board.” The state assessee argued that the information omitted by the company did not result in the under-reporting of property. Thus, it concluded that no penalty could be levied. This bill would expressly provide that all schedules, documents, and other required information are part of the “property statement.” This will avoid disputes between the Board and state assessees on this matter in the future.
7. **Partial Abatement.** Giving the Board the flexibility to partially abate the penalty depending on the nature and materiality of the omission could achieve a more equitable result. Lack of partial abatement leaves the Board with two extreme alternatives – levy a potentially steep penalty or no penalty at all. Because the penalty can be substantial, the Board on occasion has chosen to abate the penalty in full, even though it felt some penalty – albeit at a less severe level – was warranted. This bill would grant the ability to abate only a portion of the penalty for late or incomplete filing when the missing or late documents were not ultimately necessary. Partial abatement would allow the Board to tailor the penalty to fit the nature and materiality of the omission.
8. **Penalty Abatement at Value Setting.** This bill would codify the Board's current administrative practice of abating penalties at the time it initially sets values which is the most cost effective approach and would reduce unnecessary paperwork for the Board and state assessees. Additionally, codifying the existing administrative practice would provide clarity to tax practitioners.

## COST ESTIMATE

The Board would not incur any costs as a result of this measure.

## REVENUE ESTIMATE

This measure does not have any direct revenue impact. Any change in revenues would result from the Board levying a partial penalty that it previously would have abated in full or where the Board deliberates to reduce a penalty that it previously would have levied at the 10% level.

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